HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.17019 of 2007

Between:

Xerox India Ltd.

. . .Petitioner

AND

Government of Andhra Pradesh,
Through Principal Secretary to Government,
Revenue (CT-II) Department, Hyderabad
and others

. . .Respondents

:: ORDER ::

Counsel for the petitioner: Shri B. Anil Kumar
for M/s. Lakshmi Kumaran &
Sridharan

Counsel for the respondents: Special Government Pleader
for Commercial Taxes

August 10, 2007

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Per G.S. Singhvi, CJ

This petition is essentially directed against order dated 3.11.2006 passed by Appellate Deputy Commissioner (CT), Secunderabad Division, Hyderabad (respondent No.3) and consequential demand notice dated 25.7.2007 issued by Commercial Tax Officer, Basheerbagh Circle, Hyderabad (respondent No.4) under the Andhra Pradesh Value Added Tax Act, 2005 for payment of tax amounting to Rs.11,79,078/- for the assessment year 2002-2003.

The petitioner is a registered dealer. For the assessment year 2002-2003, respondent No.4 vide his order dated 29.3.2006 assessed the petitioner and created tax liability of Rs.26,70,983/- and Rs.3,01,699/- under the Andhra Pradesh General Sales Tax Act, 1957 and the Central Sales Tax Act, 1956 respectively. The petitioner challenged the assessment by filing an appeal along with an application for stay. Respondent No.3 dismissed the prayer for stay by recording the following order:

> "M/s. Xerox India Limited, Somajiguda, Hyderabad, the appellant herein, filed this appeal against the assessment orders of the Commercial Tax Officer, Basheerbagh Circle, Hyderabad for the year 2002-03 under the APGST Act. Along with the appeal petition, the appellants have also filed application for stay of collection of disputed tax of Rs.26,80,983/- & Rs.3,01,699/-. The said application was posted for hearing on 3.11.2006. In response to the hearing notice, the appellants Authorised Representative has appeared before me and argued the stay petition.
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> I have heard the arguments of the Authorised Representative and perused the grounds of stay application and gone through the impugned assessment order carefully. In the absence of recorded evidence, I find no cause to grant stay of collection of disputed tax of Rs.26,70,983/- & Rs.3,01,699/-.
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> I, therefore, refuse to order of stay of collection of disputed tax of Rs.26,70,983/- & Rs.3,01,699/-. Accordingly, the stay application is

rejected."

The petitioner has challenged the aforementioned order on various grounds including the one that the same does not satisfy the requirement of a speaking order.

We have heard learned counsel for the parties and perused the record. In our opinion, the order under challenge is liable to be set aside on the ground of non-compliance of one of the facets of the rules of natural justice, which casts a duty on every quasi judicial authority to record reasons in support of its decision and communicate the same to the affected person. The requirement of passing a speaking order or recording of reasons and communication thereof to the affected party has been treated as an integral part of the concept of natural justice - **Harinagar Sugar Mills v. Shyam Sundar**[1], **M.P.Industries Limited v. Union of India**[2], **Bhagat Raja v. Union of India**[3], **Mahavir Prasad Santoshkumar v. State of U.P.**[4], **Travancore Rayons v. UOI**[5], **Messrs Ajanta Industries v. Central Board of Direct Taxes, New Delhi**[6], **Messrs Siemens Engineering & Manufacturing Company v. Union of India**[7], **S.N. Mukherjee v. Union of India**[8], **Charan Singh v. Healing Touch Hospital**[9] **State of Punjab v. Bagh Singh**[10], **State of Orissa v. Dhaniram Luhar**[11], **State of Rajasthan v. Sohan Lal**[12], **Cyril Lasrado v. Juliana Maria Lasrado**[13], **Mangalore Ganesh Beedi Works v. CIT**[14] and **Manorama Sachan v. Lucknow Development Authority**[15]. In **S.N. Mukherjee v. Union of India** (supra), the Constitution Bench of the Supreme Court noticed the legal position obtaining in Australia, England, United States of America, referred to a large number of

judicial precedents on the subject, and laid down the following proposition:

> "……Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U. S. A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case."

In **State of Punjab v. Bagh Singh** (supra), the Supreme Court observed:

> "Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is

ordinarily incongruous with a judicial or quasi-judicial performance."

In **State of Rajasthan v. Sohan Lal** (supra), the Supreme Court while dealing with the question whether the High Court was required to assign reasons for recording reasons while disposing of petitions filed under Section 378 (3) Cr.P.C. observed:

> "The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. … The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know of the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the first appellate court. ……."

In **Cyril Lasrado v. Juliana Maria Lasrado**[13] (supra), the Supreme Court considered the same question and held as under:

> "……Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

In **Testeels Limited v. N.M. Desai, Conciliation Officer and another**[16], a Full Bench of the Gujarat High Court made a lucid exposition of law on the subject and we can do no better than to

reproduce the relevant paragraphs of that judgment, which are as under:

> "There are two strong and cogent reasons why we must insist that every quasi-judicial order must disclose reasons in support of it. The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of our constitutional set-up. Our Constitution posits a welfare State in which every citizen must have justice—social, economic and political and in order to achieve the ideal of welfare State, the State has to perform several functions involving acts of interferences with the free and unrestricted exercise of private rights. The State is called upon to regulate and control the social and economic life of the citizen in order to establish socio-economic justice and remove the existing imbalance in the socio-economic structure. The State has, therefore, necessarily to entrust diverse functions to administrative authorities which involve making of orders and decisions and performance of acts affecting the rights of individual members of the public. In exercise of some these functions, the administrative authorities are required to act judicially. Now what is involved in a judicial process is well settled and as pointed out by Shah J. in **Jaswant Sugar Mills's** case, AIR 1963 SC 677 supra, a quasi-judicial decision involves the following three elements:
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> (1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
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> (2) It declares rights or imposes upon parties obligations affecting their civil rights; and
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> (3) The investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation, of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.
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> Another reason of equal cogency which weighs with us in spelling out the necessity for giving reasons is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32. The High Court under Article 226 and the Supreme Court under Article 32 have the power to quash by certiorari a quasi-judicial order made by an administrative officer and this power of review exercisable by issue of certiorari can be effectively exercised only if the order is a speaking order and reasons are given in support of it. If no reasons

> are given, it would not be possible for the High Court or the Supreme Court exercising its power of judicial review to examine whether the administrative officer has made any error of law in making the order. It would be the easiest thing for an administrative officer to avoid judicial scrutiny and correction by omitting to give reasons in support of his order. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. The power of judicial review is a necessary concomitant of the rule of law and if judicial review is to be made an effective instrument for maintenance of the rule of law, it is necessary that administrative officers discharging quasi-judicial functions must be required to give reasons in support of their orders so that they can be subject to judicial scrutiny and correction."

There is no dispute between the parties that while deciding the application for stay, respondent No.3 was exercising quasi judicial function. Therefore, even though he was not expected to pass a judgment like a regular court, it was his bounden duty to record some reasons indicating the application of mind to the factors which are relevant for passing or refusing an order of stay in the matter of levy and collection of taxes. The order under challenge is totally silent on consideration of the relevant factors.

Learned Special Government Pleader for Commercial Taxes fairly stated that the order under challenge does not reflect application of mind by the officer concerned to the relevant factors.

In view of the above, the writ petition is allowed and order dated 3.11.2006 is quashed with the direction that Appellate Deputy Commissioner (CT), Secunderabad Division shall pass fresh order on the petitioner's application for stay within a maximum period of three weeks from today. We also direct that till the passing of fresh order, the demand notice issued by respondent No.4 shall not be executed.

As a sequel to allowing of the writ petition, WPMP No.21744

and 21745 of 2007 filed by the petitioner for interim relief are disposed of as infructuous.

G.S.SINGHVI, CJ

August 10, 2007

C.V. NAGARJUNA REDDY, J

Note:
The Court Officer is directed to give attested copies of this order to the learned counsel for the parties on or before 14.8.2007.
(By order)
svs

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[1] AIR 1961 SC 1669
[2] AIR 1966 SC 671
[3] AIR 1967 SC 1606
[4] AIR 1970 1302
[5] AIR 1971 SC 862
[6] AIR 1976 SC 437
[7] AIR 1976 SC 1785
[8] AIR 1990 SC 1984
[9] (2000) 7 SCC 668
[10] (2004) 1 SCC 547
[11] (2004) 5 SCC 568
[12] (2004) 5 SCC 573
[13] (2004) 7 SCC 431
[14] (2005) 5 SCC 75
[15] (2005) 9 SCC 425
[16] AIR 1970 GUJARAT 1